

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GILBERTO LIMON-RODRIGUEZ,)
)
Plaintiff,)
vs.)
)
UNITED STATES DEPARTMENT OF)
HOMELAND SECURITY; U.S.)
CUSTOMS AND BORDER)
PROTECTION; DOES 1 through 25)
inclusive, in their individual and official)
capacities,)
)
Defendants.)

Case No.: 2:11-cv-00313-GMN-GWF

ORDER

Plaintiff Gilberto Limon-Rodriguez filed a Complaint (ECF No. 1) against Defendants United States Department of Homeland Security and United States Customs and Border Protection (collectively, “the United States”). Pending before the Court is the United States’ Motion to Transfer Action to Southern District of California (ECF No. 10).

I. BACKGROUND

This is an action brought against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671–2680. Plaintiff, a U.S. citizen and resident of Nevada, alleges that he suffered injury due to the actions of United States Customs and Border Protection employees in Calexico, California, while on his way to visit family in Mexico on January 15, 2008, and that Defendants’ employees have continued to harass him when he has “subsequently gone back and forth across the border at Calexico.” (Compl., 1-2:¶1.)

1 Plaintiff alleges that a U.S. Border Patrol Officer, Jesus Martinez¹, stopped him in
2 Calexico under suspicion of being an illegal immigrant when he was walking to the bank
3 to pay for possible tire repairs. Plaintiff alleges that Agent Martinez ignored his attempts
4 to prove that he was a United States citizen, called him a liar, kicked his leg out from
5 under him, forced him to his knees and handcuffed him, pushed him into the pavement,
6 struck him, forced him into a patrol car, and drove him to an open field near the border
7 fence where another officer, Officer Armando Garcia, met them. (Compl. ¶¶ 16–20, ECF
8 No. 1.) Plaintiff alleges that Officer Garcia told Officer Martinez that Plaintiff was
9 caught running across the border with two other men, but Plaintiff told them it was a
10 mistake and was allowed to show his identification. (Compl., 5:¶20.) Plaintiff then
11 alleges that the Officers went away to speak to each other and that when they returned
12 they gave him a claim form to file a claim for compensation for his physical injuries.
13 (Compl., 5:¶21.)

14 Plaintiff's Complaint alleges eight counts against Defendants: (1) Violation of
15 Fourth Amendment; (2) Violation of Fifth Amendment; (3) Intentional Infliction of
16 Emotional Distress; (4) Negligent Infliction of Emotional Distress; (5) Assault/False
17 Imprisonment/Kidnapping; (6) Battery; (7) Negligence; and (8) Deprivation of Civil
18 Rights through Intimidation; 42 U.S.C. §§ 1983, 1985, and 1986.

19 **II. LEGAL STANDARD**

20 Under 28 U.S.C. § 1404, a district court may “in the interest of justice” transfer a
21 case to any other district where venue lies “[f]or the convenience of parties and
22 witnesses” even if venue is proper in the original district under § 1391. § 1404(a). The
23 district court must “balance the preference accorded plaintiff's choice of forum with the
24

25 ¹ Plaintiff states in his Complaint that he is uncertain as to the true names of the Agents he has
encountered. (Compl., 3:¶12, 4:¶16, 4-5:¶20.)

1 burden of litigating in an inconvenient forum.” *Decker Coal Co. v. Commonwealth*
2 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). The moving party bears the burden of
3 showing the balance of conveniences favors the transfer. *Commodity Futures Trading*
4 *Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir. 1979).

5 The Ninth Circuit has identified a number of public and private factors that a
6 district court may consider on a case-by-case basis in deciding whether venue should be
7 transferred. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498–99 (9th Cir. 2000).

8 These factors include: (1) the location where the relevant agreements were negotiated and
9 executed, (2) the state that is most familiar with the governing law, (3) the plaintiff’s
10 choice of forum, (4) the respective parties’ contacts with the forum, (5) the contacts
11 relating to the plaintiff’s cause of action in the chosen forum, (6) differences in the costs
12 of litigation in the two forums, (7) the availability of compulsory process to compel
13 attendance of unwilling non-party witnesses, and (8) ease of access to sources of proof.
14 *Id.* The Ninth Circuit has also concluded that the relevant public policy of the forum
15 state, if any, is at least as significant a factor in the § 1404(a) balancing. *Id.*

16 **III. DISCUSSION**

17 The Court must first determine if the case could have been brought in the proposed
18 transferee district. Plaintiff does not dispute that this case could have originally been
19 brought in the Southern District of California. Therefore the Court turns to the
20 convenience factors.

21 Plaintiff opposes Defendants’ motion, arguing that he “would be at a major
22 disadvantage if the case were transferred to California,” because he “lives and works in
23 Las Vegas, Nevada, as does his attorney,” and “[h]e would be required to bear the cost of
24 his own travel plus either compensating his attorney’s travel, or engaging new counsel.”
25 (Pl.’s Resp. to Mot. to Transfer, 2:16-20, ECF No. 12.) Plaintiff argues that the “named

1 Defendants who are seeking the transfer have offices both in Las Vegas and California,
2 and have an entire host of attorneys at their disposal wherever there is a federal court.”
3 (*Id.* at 2:20-22.) Plaintiff focuses further on his counsel, arguing that “[i]t would be a
4 hardship on Plaintiff and his counsel to travel to California for trial, in fact, Plaintiff’s
5 counsel is not licensed to practice in the Southern District of California, or in the State of
6 California for that matter.” (*Id.* at 2:13-26.) Plaintiff also argues that “the doctors,
7 surgeons and medical providers that worked with the Plaintiff to repair his injuries all live
8 and work in Southern Nevada, and the costs of bringing them to California to testify at
9 trial would be prohibitive.” (*Id.* at 3:2-5.)

10 The *Jones* factors considered by the Court are as follows.

11 *(1) the location where the relevant agreements were negotiated and executed*

12 Here, there are no agreements, so this factor does not apply to the Court’s analysis.

13 *(2) the state that is most familiar with the governing law*

14 This action arose in California; therefore the substantive law of California applies.
15 See 28 U.S.C. § 1346(b)(1) (granting subject matter jurisdiction for negligence-based
16 claims against the United States where liability is established “in accordance with the law
17 of the place where the act or omission occurred”). The federal courts sitting in California
18 would be better suited to handle the California state law tort claims than Nevada federal
19 courts. Therefore, this factor weighs in favor of granting the motion.

20 *(3) the plaintiff’s choice of forum*

21 Plaintiff chose the District of Nevada as the forum for his Complaint, therefore
22 this factor weighs in favor of Plaintiff’s opposition.

23 *(4) the respective parties’ contacts with the forum*

24 As discussed above, Plaintiff frequently travels through Southern California on the
25 way to visit his family. Defendants are located in Southern California, and although the

1 named Defendants have offices in Nevada, the unnamed Doe Defendants are most likely
2 to reside in California. Therefore, this factor weighs in favor of granting the motion.

3 *(5) the contacts relating to the plaintiff's cause of action in the chosen forum*

4 Again, and as discussed above, the contacts relating to Plaintiff's causes of action
5 are primarily in California, not Nevada. Plaintiff stated in his Complaint that his wife,
6 who is a Mexican citizen, and their children live in Mexico, so he "travels back and forth
7 into Mexico frequently and regularly and has been inspected at the Calexico port of entry
8 dozens and dozens of times." (Compl., 3:¶10.) Also, all the witnesses that would testify
9 about the facts and circumstances of the events, besides Plaintiff, likely live in California.
10 However, the United States does not list the witnesses, nor does it state how many there
11 are likely to be.

12 Also, Plaintiff's doctors, who relate to Plaintiff's damages claims, are located in
13 Southern Nevada. Although Plaintiff argues that "the doctors, surgeons and medical
14 providers that worked with the Plaintiff to repair his injuries all live and work in Southern
15 Nevada, and the costs of bringing them to California to testify at trial would be
16 prohibitive," Plaintiff does not state how many of these witnesses exist, or whether their
17 live testimony would be required. (Pl.'s Resp. to Mot. to Transfer, 3:2-5.) The Court is
18 therefore not convinced that these doctors must travel to California if the action is
19 transferred, or that this cost would be substantial.

20 For these reasons, the Court finds that this factor does not weigh significantly in
21 favor of either party.

22 *(6) differences in the costs of litigation in the two forums*

23 Plaintiff's arguments focus predominantly on this factor. As Plaintiff
24 acknowledges, he could engage new counsel in California, and he travels through
25 Southern California frequently, therefore this part of Plaintiff's argument does not weigh

1 as heavily as Plaintiff argues. The Court recognizes that obtaining expert witnesses is
2 potentially expensive, but the Plaintiff gives no evidence to show how many expert
3 witnesses are likely to be required. Therefore, the Court finds that this factor does not
4 weigh significantly in favor of either party.

5 *(7) the availability of compulsory process to compel attendance of unwilling non-*
6 *party witnesses*

7 Neither party addresses this factor as being relevant to the Court's analysis, and
8 the Court does not find otherwise.

9 *(8) ease of access to sources of proof*

10 The Court finds that this factor weighs in favor of granting the motion, because all
11 sources of proof as to the events giving rise to Plaintiff's causes of action are in Southern
12 California, except for Plaintiff, and Plaintiff travels through Southern California
13 frequently.

14 After weighing each of these factors, the Court finds that the balance of
15 conveniences is very close. As discussed above, the Court must balance the preference
16 accorded Plaintiff's choice of forum with the burden of litigating in an inconvenient
17 forum. The United States bears the burden to show that the balance of conveniences
18 favors the transfer. Neither party presented arguments that weighed particularly heavily
19 on the convenience scale. However, the Court nevertheless finds that the United States
20 has met its burden, and will grant the motion.

21 ///

22 ///

23 ///

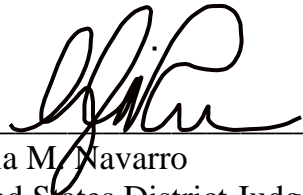
24 ///

25 ///

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that the Motion to Transfer (ECF No. 10) is
3 **GRANTED** and this case is **TRANSFERRED** to the Southern District of California.

4
5 DATED this ____⁴____ day of April, 2012.

6
7
8 
9 _____
 Gloria M. Navarro
 United States District Judge